IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6705 OF 2004

Smt. Surekha Lalaso Shinde
and two others ...Petitioners

Versus

Smt. Tarabai Baburao Shinde & Anr ...Respondents

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Mr. J.P. Kharge, counsel for Petitioners

Mr. T.S.Ingale, counsel for Respondent No.1.

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CORAM: B. H. MARLAPALLE, J.

DATED: 18TH MARCH, 2005

P. C.:-

1. Heard Mr. Kharge, the leaned counsel for the petitioners and Mr. Ingle the learned counsel for the respondent No.1. The respondent has applied for claiming one fourth share and the said application had registered as Misc. application No. 70 of 2000 in the Court of C.J.S.D. Sangli. After about four years, an application at Exh.48 came to be filed by the present petitioners praying for rejection of the Misc Application No. 70 of 2000 on the ground that it was not maintainable U/sec. 372 of the Indian Succession Act. When the application was called for hearing none was present for the present petitioners and the Court noted that the proceedings were pending

and adjournment was sought for from time to time. The application at Exh.48 came to be disposed of by the impugned order dated 23.4.2004 by noting that the issue of jurisdiction was kept open for being decided while rendering the final decision on merits.

2. This petition can be disposed of by directing the court below to frame the issue of maintainability of the application as the first issue alongwith the other issues and the Misc. Application No. 70 of 2000 shall be heard and decided as expeditiously as possible and preferably within a period of six months from the receipt of writ from this Court. If the findings on the issue of maintainability are held against the present petitioner, no other issues are required to be decided and the application will have to be rejected. In the impugned order dated 23.4.2004, the trial Court has maintained the legal position and therefore, the application at Exh.48 has been disposed of by noting that the issue of jurisdiction was left open.

3. Petition is disposed of in terms of the above directions.

4. Writ to go forthwith to the trial court.